

Samantha J. Slark (#10774)  
Catherine L. Brabson (#6500)  
Salt Lake City Attorney's Office  
451 S. State Street, Suite 505A  
P.O. Box 145478  
Salt Lake City, UT 84114-5478  
Telephone: (801) 535-7788  
[Samantha.Slark@slcgov.com](mailto:Samantha.Slark@slcgov.com)  
[Catherine.Brabson@slcgov.com](mailto:Catherine.Brabson@slcgov.com)

*Attorneys for Plaintiff*

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**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

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SALT LAKE CITY CORPORATION, a  
political subdivision existing under the laws  
of the State of Utah,

Plaintiff,

v.

UTAH INLAND PORT AUTHORITY, a  
political subdivision existing under the laws  
of the State of Utah; STATE of UTAH,  
GARY R. HERBERT, in his official capacity  
as the Governor of the State of Utah; and  
SEAN D. REYES, in his official capacity as  
the Attorney General of the State of Utah,

Defendants.

**AMENDED  
COMPLAINT  
(Tier 2)**

Case No. 190902057

Judge James Blanch

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Plaintiff Salt Lake City Corporation ("Plaintiff") hereby complains against the Utah Inland Port Authority, the State of Utah, Gary R. Herbert in his official capacity as the Governor of the State of Utah, and Sean D. Reyes, in his official capacity as the Attorney General of the State of Utah, and alleges as follows:

## **PARTIES**

1. Plaintiff Salt Lake City Corporation is a political subdivision, duly organized and existing under the laws of the State of Utah.

2. Defendant the Utah Inland Port Authority is a political subdivision of the state of Utah created by the Utah Inland Port Authority Act, Utah Code § 11-58-101 *et. seq.*

3. Defendant Gary R. Herbert is the Governor of the State of Utah.

4. Sean D. Reyes is the Attorney General for the State of Utah.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to Utah Code § 78A-5-102(1).

6. Venue properly lies in this Court pursuant to Utah Code § 78B-3-307.

## **FACTUAL ALLEGATIONS**

### **A. The State Decides to Relocate the Utah State Prison to the Northwest Quadrant.**

7. In 2015, a decision was made by the State of Utah to relocate the Utah State Prison from its current location in Draper, Utah to an area within Salt Lake City referred to by the City as the Northwest Quadrant. A map of the City's Northwest Quadrant, indicating the locations of the new prison site is attached as Exhibit A.

8. The Northwest Quadrant is approximately 22,700 acres of largely undeveloped land that lies to the west of the Salt Lake City International Airport and to the north and south of Interstate 80 ("I-80"). *Id.*

9. Pursuant to the State's decision to relocate the prison to the Northwest Quadrant, the State's Division of Facilities Construction and Management ("DFCM") approached the City to negotiate an agreement with the City regarding municipal services necessary for the construction

of the new prison, including the construction and maintenance of streets and the supply of water and sewer to this currently unserved area of the City.

10. The City and DFCM executed an agreement wherein the parties agreed on the approximate location of certain infrastructure and the parties' respective responsibilities with respect to preliminary design, final design, construction, ownership, and funding of the infrastructure, which included provisions that the City participate in the planning and preliminary design work and provided for City oversight throughout the process.

11. Due to the location of the new prison site, the State's construction costs are high and costs to relocate the prison will likely exceed \$860 million.

**B. The City Executes Development Agreements with Property Owners to Facilitate Development of the Northwest Quadrant.**

12. In 2015 and 2016, property owners in the Northwest Quadrant north of I-80 began discussions with the City about developing currently undeveloped property in the Northwest Quadrant.

13. Specifically, Kennecott Utah Copper, LLC and NWQ, LLC (collectively, the "Northern Property Owners") own approximately 4,316 acres of property in the Northwest Quadrant and approached the City with the concept of developing an inland port on a portion of undeveloped land they currently own in the Northwest Quadrant.

14. The Northern Property Owners intend to construct a railyard facility that will facilitate transportation of goods from coast-to-coast and transfer goods from trains to trucks.

15. On January 9, 2018, the Redevelopment Agency of Salt Lake City ("RDA") created the Northwest Quadrant Community Reinvestment Project Area ("Northwest Quadrant CRA"),

which includes the Northern Property Owners' properties. *See* Exhibit A, Map of Northwest Quadrant, indicating Northwest Quadrant CRA.

16. On January 31, 2018, the City and Northern Property Owners executed development agreements in order to facilitate the Northern Property Owners' intentions to develop their properties, including development of an inland port.

17. The Northern Property Owners' properties are within the City's M-1 zone.

18. The development agreements provide the Northern Property Owners vested rights in the City's existing land use ordinances as of the date of the agreements.

19. They also provide standard assurances that the City will supply water and sewer services, if the Northern Property Owners construct pipelines that connect their properties to the existing infrastructure and deed those pipelines to the City.

20. The development agreements also provide a process by which the Northern Property Owners may seek reimbursement from the City for certain construction-related projects on their properties.

21. On February 20, 2018, the City Council adopted amendments to the M-1 zone, titled Global Trade Port in Manufacturing Zones Amendments, which are intended to further facilitate the development of an inland port.

**C. The City and State Discuss Adoption of Legislation to Support the Mutual Goal of Developing and Constructing an Inland Port.**

22. On February 1, 2018, Speaker of the House of Representatives Greg Hughes called a meeting with Salt Lake County ("County"), the City, property owners in the City's Northwest Quadrant, and other state legislators to announce that he intended to pursue legislation to govern and support the development of an inland port in the Northwest Quadrant.

23. On February 6, 2018, the Salt Lake City Council (“City Council”) held a meeting to discuss Speaker Hughes’ intent to pursue an inland port bill.

24. Speaker Hughes, Representative Francis Gibson, and Senator Jerry Stevenson attended the City Council meeting.

25. At the City Council meeting, the Council told the legislators that they supported the vision of developing an inland port in the Northwest Quadrant and that the City had already taken steps to facilitate the Northern Property Owners’ development of their land for that purpose.

26. The City Council also told the legislators that they would support legislation that further facilitated economic development of the Northwest Quadrant and the mutual goal of developing an inland port, but only if the City retained authority to regulate land use and other core municipal functions.

27. Just under a week after this City Council meeting, representatives from the City, including the Mayor and the City Council Chair, met with Representative Francis Gibson and Senator Jerry Stevenson, to discuss the potential of an inland port bill.

28. The City again made clear that it supported the goal of developing an inland port in the Northwest Quadrant provided the legislation did not remove the City’s land use authority or other core municipal functions.

29. Three days after this meeting, the Mayor, Council Chair and other City representatives met with Speaker Hughes, Representative Gibson, and Senator Stevenson to further discuss the proposed inland port bill.

30. The State representatives all stated they believed an inland port bill was necessary to provide certainty to property owners in the Northwest Quadrant and to ensure that all

governmental stakeholders participated equally in the investment necessary to develop an inland port in the Northwest Quadrant.

31. The meeting concluded with Speaker Hughes and Senator Stevenson asking counsel for the Legislature and counsel for the City to work together on proposed language for an inland port bill.

32. Four days after that meeting, counsel for the City sent counsel for the Legislature an email outlining the City's proposed concepts for an inland port bill.

33. The City proposed a map of properties in the Northwest Quadrant that would be subject to the terms of the legislation, identified as the "jurisdictional land."

34. The City proposed a board that would be composed of seven members, three members from the State of Utah, three from the City, and one from the County.

35. The proposed board would have specific tasks and duties with respect to the jurisdictional land, including being an administrative land use appeal authority for any of the City's land use decisions made with respect to property within the jurisdictional land.

36. The City emphasized the board's function as an administrative land use appeal must be subject to the standard of review set forth in State statutes and City ordinances, which govern all other City land use administrative appeals.

37. The following day representatives from the City, the State, and the Northern Property Owners met and discussed the terms proposed by the City.

**D. The State Proposes S.B. 234 that Delegates the City's Land Use Authority in the Northwest Quadrant to a Special Commission and Interferes with Municipal Monies.**

38. On February 26, 2018, the first version of S.B. 234, the Utah Inland Port Authority Act, was released to the public.

39. The bill created an Inland Port Authority, referred to hereinafter as the “Authority.”

40. The bill provided the Authority exclusive jurisdiction to exercise certain powers and duties with respect to approximately 20,000 acres of property in the Northwest Quadrant, all within the City’s geographic boundaries, which it referred to as the jurisdictional land.

41. The bill proposed a nine member board to govern, manage and conduct the business affairs of the Authority, which would consist of five members appointed by the State, three members appointed by the City, and one member appointed by the County. (Referred to hereinafter as the “Board”).

42. Among the powers and duties delegated to the Authority, through the Board, was the right to hear appeals from the City’s administrative land use decisions for property located in the jurisdictional land.

43. The Board’s review of City decisions was not made subject to existing State law and City ordinances, which require a review of the correctness of the land use authority’s decision under the applicable City ordinance.

44. Rather, the bill proposed a new standard that gives the Board the right to overturn the City’s land use decision if the decision does not meet the Authority’s “strategies, policies and objectives” for the Northwest Quadrant.

45. This initial bill also proposed the Board act as the appeal authority for any of the City’s legislative land use decisions and that the Board may overturn the City’s legislative land use decisions under this same new standard.

46. It also proposed allowing the Board to make a land use decision on behalf of the City, if the Board determined the City had unreasonably delayed the land use decision in a manner that substantially impeded, interfered with, or impaired the development of the jurisdictional land.

47. Finally, the bill proposed payment of 5% of the total annual amount of tax differential generated from the jurisdictional land directly to the Authority.

**E. The City's Response to S.B. 234 and the 1<sup>st</sup> Substitute Bill.**

48. On February 28, 2018, the Salt Lake City Council held a special session to discuss the draft bill.

49. During the special session the Council expressed its concern that contrary to the City and State's discussions the proposed bill effectively delegated the City's land use authority for property located on the jurisdictional land to the Authority and improperly redirected municipal funds directly to the Authority.

50. The City Council indicated it continued to support passing legislation to facilitate development of an inland port in the Northwest Quadrant, but significant amendments were necessary for the City to support this bill.

51. Specifically, the City Council indicated that any proposed revisions to the bill must respect local authority.

52. After the City Council special session, Senator Stevenson proposed and the Senate accepted the first substitute to S.B. 234 ("1<sup>st</sup> Substitute bill").

53. The 1<sup>st</sup> Substitute bill reduced the boundaries of the jurisdictional land, removed the Board's power to act as the appeal authority for legislative land use decisions, and removed



the Board's right to make land use decisions on behalf of the City, if it determined the City had unreasonably delayed the land use decision.

54. No amendments were made to the provisions redirecting 5% of tax revenue directly to the Authority.

**F. City Representatives Testify Against the 1<sup>st</sup> Substitute Bill.**

55. On March 2, 2018, the Senate Committee held a hearing on the 1<sup>st</sup> Substitute bill.

56. The Mayor, Council Chair, City Planning Director Nick Norris and Senior City Attorney Katie Lewis each testified against the bill.

57. The Mayor testified that under the 1<sup>st</sup> Substitute bill, “an unelected and unaccountable Board would have the right to override the City's administrative land use decisions—not based on fair and equitable standards, but instead based on the Board's opinion that the City's land use decision does not achieve the Board's goals for developing an inland port.”

58. The Mayor further testified that this appeal authority “usurps a core municipal function and gives an unaccountable Board the right to supersede the City's ordinances if it has a different opinion about how the northwest quadrant should be developed. Such unprecedented authority has far-reaching unintended consequences, not just for the City, but for other municipalities in the state and is an overreach into local authority.”

59. The Mayor also testified against the taking of 5% of the tax differential from the jurisdictional land stating it was an interference with City budgetary authority because the Authority could take the money “for any purpose the Board decides is consistent with its goals for developing the northwest quadrant—with no budgetary oversight from the elected officials that represent that area.”

60. Council Chair Mendenhall also testified that while the City seeks a true partnership with the State and other stakeholders on the development of an inland port in the Northwest Quadrant, S.B. 234 as drafted was problematic because it was an unprecedented encroachment on core municipal functions that could have impacts on municipalities across the State.

61. Planning Director Nick Norris testified that Section 11-58-404 was problematic because it is an override of local land use authority, establishes a different standard of review than any other appeals in the City, and adversely affects the due process rights of appealing parties.

62. Senior City Attorney Katie Lewis testified that S.B. 234 usurps the City's core municipal authority by: (1) fundamentally changing the administrative land use appeal process; (2) taking tax differential for broader purposes than allowed under Utah law and without the City Council's budgetary authority; and (3) creates a board without equal City representation even though the entire jurisdictional lands are within City boundaries.

**G. The 2<sup>nd</sup> Substitute to S.B. 234 is Introduced.**

63. Three days after the hearing, the Senate passed a second substitute to S.B. 234. ("2<sup>nd</sup> Substitute bill").

64. The 2<sup>nd</sup> Substitute bill increased the boundaries of the jurisdictional land and reduced the Authority's right to take tax differential from 5% to 2%.

65. The 2<sup>nd</sup> Substitute bill did not include revisions to the delegation of power to the Board to hear and overturn the City's administrative land use decisions on the newly created standard.

66. On receiving the 2<sup>nd</sup> Substitute bill, the City worked with House Representative Patrice Arent to propose an amendment to the 2<sup>nd</sup> Substitute that would include language stating

any land use appeal to the Board is subject to the State laws and City ordinances that apply to all other appeals from the City's administrative land use decisions.

**H. The 4<sup>th</sup> Substitute Bill is Introduced and Continues to Delegate the City's Administrative Land Use Authority and Further Interferes with City Monies.**

67. Two days after introduction of the 2<sup>nd</sup> Substitute bill and one day before the end of the 2018 legislative session, Representative Gibson introduced a fourth substitute to S.B. 234. ("4<sup>th</sup> Substitute bill").<sup>1</sup>

68. The 4<sup>th</sup> Substitute bill was significantly different than the 2<sup>nd</sup> Substitute bill.

69. It increased the Authority's jurisdictional lands beyond the City's boundaries and included lands in West Valley and Magna for a total of 22,000 acres.

70. It also altered the composition of the Authority Board, increasing its size to eleven members, and reducing the City representation on the Board from three seats to two seats, eliminating the Mayor's seat.

71. The 4<sup>th</sup> Substitute made no amendments to the delegation of power to the Board to overturn City administrative land use decisions on the newly created standard.

72. The 4<sup>th</sup> Substitute bill also gave the Authority the right to create its own project areas (analogous to a redevelopment agency's right to create a project area) and re-directed up to 100% of the growth related property tax within those project areas directly to the Authority.<sup>2</sup>

73. The 4<sup>th</sup> Substitute bill permits the Authority to use these City monies for a variety of purposes, including to pay principal and interest on bonds issued by the Authority, to cover the

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<sup>1</sup> The numbering of the substitute bills went directly from 2<sup>nd</sup> Substitute to 4<sup>th</sup> Substitute. A 3<sup>rd</sup> Substitute was never introduced.

<sup>2</sup> Since the 4<sup>th</sup> Substitute bill provides no limit on the size of an Authority project area, a project area could consist of the entire jurisdictional land.

costs of installing publicly owned infrastructure and improvements outside Salt Lake City limits, and to cover the Authority's administrative costs.

74. It also gave the Authority the ability to develop publicly owned infrastructure and improvements on the jurisdictional land, including placement and construction of facilities, lines, or systems that provide water, chilled water, or steam; or sewer, storm drainage, natural gas, electricity, or telecommunications service; and streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities.

#### **I. The Rushed Passage of the 4<sup>th</sup> Substitute Bill.**

75. The 4<sup>th</sup> Substitute Bill, a thirty-two page bill, was introduced late in the evening, one day before the end of the 2018 legislative session.

76. Representative Gibson and Representative Winder spoke in favor of the bill.

77. Representative Sandra Hollins spoke in opposition, expressing concern for the health and safety of residents living near the Inland Port.

78. The House of Representatives then voted to cut off debate, preventing anyone else from speaking to the bill.

79. At 9:34 p.m., a vote of the House was conducted and the 4<sup>th</sup> Substitute bill was passed out of the House on a 61 to 11 vote, less than thirteen minutes after the 4<sup>th</sup> Substitute bill was introduced.

80. The 4<sup>th</sup> Substitute bill was presented on the Senate floor at 9:45 p.m., eleven minutes later.

81. Senator Stevenson spoke regarding the bill and received questions from Senator Lyle Hillyard and Senator Luz Escamilla who were both concerned about the ramifications of the newly added language in the 4<sup>th</sup> Substitute bill.

82. At 9:51 p.m., a vote of the Senate was conducted and the 4<sup>th</sup> Substitute bill was passed by the Senate on a 20 to 6 vote, only six minutes after the Senate received the thirty-two page modified bill.

83. Essentially, in less than forty-five minutes from the time Representative Gibson introduced the 4<sup>th</sup> Substitute bill to the House floor, which was substantively different than the 2<sup>nd</sup> Substitute, the bill passed both the House and Senate and was ready for the Governor's signature.

**J. The City Requests the Governor Veto the 4<sup>th</sup> Substitute Bill.**

84. On March 8, 2018, the Mayor and Council Chair met with Governor Gary Herbert to request he veto the 4<sup>th</sup> Substitute bill.

85. After the meeting, the Mayor sent the Governor a letter again requesting that he veto the bill and reiterating that the City had worked closely with Senator Stevenson throughout the legislative session and would accept the 2<sup>nd</sup> Substitute bill with four changes. A copy of the Letter from Mayor Biskupski to Governor Herbert dated March 12, 2018 is attached as Exhibit B.

86. Specifically, the City stated the 2<sup>nd</sup> Substitute bill would be acceptable with the following four amendments: (a) administrative land use appeals are subject to the same state laws and City ordinances that apply to all other administrative land use decisions; (2) the City gives 2% of its tax differential from existing project areas to the Authority; (3) the size of the jurisdictional land is reduced; and (4) the City has equal seats on the Board as the State.

87. The Mayor had another meeting with the Governor the day after the letter was sent and again requested that he veto the bill.

**K. The Utah League of Cities and Towns and the School District also Request the Governor Veto the Bill.**

88. The Utah League of Cities and Towns and the Salt Lake City School District also sent messages to Governor Herbert requesting he veto the bill.

89. The Utah League of Cities and Towns, speaking on behalf of the 247 municipalities it represents, requested the Governor veto the 4<sup>th</sup> Substitute bill because it violates two core principles of local control, land use authority and local property tax.

90. The letter states that the 4<sup>th</sup> Substitute bill impacts approximately 27% of the total land within the geographic boundaries of Salt Lake City.

91. The letter points out that the 4<sup>th</sup> Substitute bill permits the Authority to redirect approximately \$360 million in new municipal property tax revenue from the City and approximately \$581 million in new municipal property tax revenue from the Salt Lake City School District.

92. Despite this severe loss of tax revenue, the City will still be responsible to provide municipal services such as water, sewer, street lighting, roads and sidewalk construction, maintenance and snow removal, and police and fire protection to the Northwest Quadrant.

93. As such, the 4<sup>th</sup> Substitute bill requires Salt Lake City tax payers to subsidize municipal services for the jurisdictional land.

94. The letter urged the Governor to veto the bill in light of the significant constitutional and policy issues raised.

95. The Salt Lake City School District urged the Governor to veto the bill, noting that the school district is the fifth poorest school district in the state, and the potential loss of revenue would be of great detriment to students and teachers.

**L. The Governor Signs the Bill but Acknowledges its Problems.**

96. On March 16, 2018, the Governor signed the 4<sup>th</sup> Substitute bill, but included a letter to Speaker Hughes and Senate President Niederhauser stating he will call the legislature into a special session to “modify and improve the bill.”

97. Governor Herbert specifically stated that the City’s four concerns should be addressed to correct the bill.

98. SB 234 became law on May 8, 2018 and was codified as Utah Code § 11-58-101, *et seq.*, the Utah Inland Port Authority Act (referred to hereinafter as “Utah Inland Port Authority Act” or “UIPAA”).

**M. The July 2018 Special Session does not Resolve the Constitutional Deficiencies of the Utah Inland Port Authority Act.**

99. In July of 2018, the Governor called a special session to address the concerns raised by the City and to attempt to remedy the constitutional deficiencies of the Utah Inland Port Authority Act.

100. At the conclusion of the special session, HB 2001 was passed by both houses and signed by Governor Herbert.

101. It made several amendments to UIPAA, but the constitutional deficiencies remain.

102. With respect to delegation of the City’s administrative land use authority, HB 2001 enacted a provision requiring the City to “allow an inland port as a permitted or conditional use”

and limited any municipal regulation of an Inland Port to provisions that are “consistent with the policies and objectives” set forth in UIPAA.

103. It also set forth a broad definition of “inland port uses” and delegated power to the Board to overturn a municipal administrative land use decision that concerns an “inland port use” on a newly created standard and introduced time lines by which a municipality must consider and process those applications.

104. With respect to the provision of municipal services, H.B. 2001 enacted a provision that mandates the City provide municipal services on the jurisdictional land and the level at which those municipal services must be provided.

105. With respect to interference with municipal monies, H.B. 2001 introduced a requirement that the Authority compensate the City for the municipal services mandated and provided, but it continues to redirect up to 100% of the City’s tax differential directly to the Authority.

106. Likewise, H.B. 2001 significantly increased the period of time over which the City’s tax differential will be redirected to the Authority by increasing the period of time over which this will occur from a period of “up to 25 years” to a period of “25 years after a certificate of occupancy is issued with respect to improvements on a parcel.”

107. H.B. 2001 made no change to the prohibition on the City’s ability to regulate “[t]he transporting, unloading, transfer, or temporary storage of natural resources” on the jurisdictional land, despite the fact that it is the health and welfare of City residents that are directly impacted by such decisions.



**N. The Amendments Introduced in the 2019 Legislative Session still do not Resolve the Constitutional Deficiencies of the Utah Inland Port Authority Act.**

108. During the 2019 legislative session, HB 433 was passed by both houses and signed by Governor Herbert, which made additional amendments to UIPAA.

109. It designated the entire jurisdictional land as one single project area.

110. H.B. 433 also expanded the power delegated to the Authority to create project areas to include land outside of the jurisdictional land.

111. However, such authority is made contingent on the consent of the municipality in which the property lies and the consent of the property owners, contingencies that were not made available to the City or owners of property in the jurisdictional land when UIPAA was passed.

112. H.B. 433 also expanded the power of the Authority to include the ability to “own and operate an intermodal hub.”

113. H.B. 433 again increased the amount of City monies that are redirected directly to the Authority by setting the base taxable value between 2017 and 2018, extending the period it may collect tax differential from twenty-five years to forty years and mandating that the Board shall take 100% of the property tax differential.

114. The Authority will start receiving these redirected funds in November 2019.

115. H.B. 433 also redirected a portion of the City’s sales and use taxes to the Authority.

116. Finally, H.B. 433 introduced a few provisions in a half-hearted attempt to placate the City’s concerns with respect to the direct environmental impacts development of the jurisdictional land will likely have on City residents, but the provisions enacted are not mandatory and contain no enforcement provisions.

117. No revisions were made to the delegation of power to the Authority to overturn City administrative land use decisions for property on the jurisdictional land on the newly created standard.

**O. The Practical Effects of the Utah Inland Port Authority Act on the City and its Residents.**

118. The jurisdictional land is approximately 25 square miles of largely undeveloped land. A map identifying the jurisdictional land is attached as Exhibit C.

119. If this were another city in Utah, it would be one of the twenty-five largest and larger than Brigham City, Sandy or South Jordan.

120. UIPAA delegates the City's administrative land use and municipal planning decisions for the jurisdictional land to the Authority and redirects City property tax monies for this area and a portion of sales tax monies directly to the Authority.

121. The Authority is not elected by the residents of Salt Lake City and is not accountable to the very people its decisions will affect the most.

**FIRST CAUSE OF ACTION**

**(Declaratory Judgment - Violation of Utah Const. Art VI, § 28)**

**—The Delegation of Administrative Land Use Authority and Municipal Planning—**

122. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

123. UIPAA creates an Authority that hears appeals of City administrative land use decisions that concern "inland port uses."

124. The Authority's review of these decisions is not limited to reviewing the City's decisions for correctness with applicable City ordinances.

125. Rather, Section 403 states the Authority may overrule a City administrative land use decision on the grounds the City's decision does not meet the Authority's "policies and objectives" for the Northwest Quadrant.

126. UIPAA also delegates to the Authority the power to create project areas and to develop publicly owned infrastructure and improvements on the jurisdictional land, including placement and construction of facilities, lines, or systems that provide water, chilled water, or steam; or sewer, storm drainage, natural gas, electricity, or telecommunications service; and streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities.

127. Article VI, Section 28 of the Utah Constitution states:

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

128. The Authority is a special commission, private corporation or association within the meaning of Article VI, Section 28 of the Utah Constitution.

129. Thus UIPAA delegates to the Authority the power to make, supervise, and interfere with municipal improvements, money, property or effects and/or the performance of municipal functions in violation of Article VI, Section 28.

130. The City contends that UIPAA's awarding of plenary power to make land use and municipal planning decisions to the Authority violates Article VI, Section 28 of the Utah Constitution.

131. Defendants contend it does not.

132. Thus, a controversy exists between the parties concerning the constitutionality of provisions of UIPAA.

133. The City is entitled to judgment pursuant to Utah Code § 78B-6-401 et seq. and Rule 57 of the Utah Rules of Civil Procedure declaring that these provisions violate Article VI, Section 28 of the Utah Constitution and an injunction prohibiting its further operation in this capacity.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment - Violation of Utah Const. Art VI, § 28)**  
**—Interference with Municipal Monies—**

134. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

135. UIPAA redirects 100% of the City's property tax differential for the jurisdictional land and from January 1, 2020 onward Utah Code § 59-12-205 redirects a portion of the City's sales and use tax for points of sale on the jurisdictional land directly to the Authority.

136. Article VI, Section 28 of the Utah Constitution states:

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

137. The Authority is a special commission, private corporation or association within the meaning of Article VI, Section 28 of the Utah Constitution.

138. Thus UIPAA delegates to the Authority the power to make, supervise, and interfere with municipal improvements, money, property or effects and/or the performance of municipal functions in violation of Article VI, Section 28.

139. The City contends that UIPAA's redirection of municipal funds directly to the Authority violates Article VI, Section 28 of the Utah Constitution.

140. Defendants contend it does not.

141. Thus, a controversy exists between the parties concerning the constitutionality of the provisions of UIPAA.

142. The City is entitled to judgment pursuant to Utah Code § 78B-6-401 et seq. and Rule 57 of the Utah Rules of Civil Procedure declaring that these provisions violate Article VI, Section 28 of the Utah Constitution and an injunction prohibiting its further operation in this capacity.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment - Violation of Utah Const. Art VI, § 28)**  
**—The Mandating of Municipal Functions—**

143. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

144. UIPAA directs the City to allow an Inland Port as a permitted or conditional use and prohibits the City from regulating the transportation or storage of certain goods on the jurisdictional land.

145. UIPAA also permits the Authority to create project areas within the jurisdictional land and mandates the City to provide municipal services in the jurisdictional land and the level of those services.

146. Article VI, Section 28 of the Utah Constitution states:

The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

147. The Authority is a special commission, private corporation or association within the meaning of Article VI, Section 28 of the Utah Constitution.

148. Thus UIPAA delegates to the Authority the power to make, supervise, and interfere with municipal improvements, money, property or effects and/or the performance of municipal functions in violation of Article VI, Section 28.

149. The City contends that UIPAA's mandating of municipal functions violates Article VI, Section 28 of the Utah Constitution.

150. Defendants contend it does not.

151. Thus, a controversy exists between the parties concerning the constitutionality of the provisions of UIPAA.

152. The City is entitled to judgment pursuant to Utah Code § 78B-6-401 et seq. and Rule 57 of the Utah Rules of Civil Procedure declaring that these provisions violate Article VI, Section 28 of the Utah Constitution and an injunction prohibiting its further operation in this capacity.

**FOURTH CAUSE OF ACTION**  
**(Declaratory Judgment - Violation of Utah Const. Art XI, § 5)**  
**—Creation of Cities or Towns by Special Law—**

153. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

154. UIPAA creates an Authority to perform all functions with respect to property on the jurisdictional land that were previously performed by the City, including receiving tax monies, adopting a budget, appropriating funds, bonding and making land use decisions.

155. Article XI, § 5 prohibits the Legislature from creating cities or towns by special law.

156. The City contends UIPAA effectively creates a city or town by special law in violation of Article XI, section 5 of the Utah Constitution.

157. Defendants contends it does not.

158. Thus, a controversy exists between the parties concerning the constitutionality of UIPAA.

159. The City is entitled to judgment pursuant to Utah Code § 78B-6-401 et seq. and Rule 57 of the Utah Rules of Civil Procedure declaring that these provisions violate Article XI, Section 5 of the Utah Constitution and an injunction prohibiting further operation of the Authority.

**FIFTH CAUSE OF ACTION**  
**(Declaratory Judgment - Violation of Utah Const. Art XI, § 8)**  
**—Creation of Authority Not Authorized—**

160. Plaintiff incorporates by reference the allegations contained in all preceding paragraphs as if fully set forth herein.

161. Article XI, Section 8 permits “[t]he Legislature to provide for the establishment of political subdivisions of the State, or other governmental entities, in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities as provided by statute.”

162. The City contends UIPAA does not create an entity that will provide services or facilities to the jurisdictional land and is not authorized by Article XI, section 8 of the Utah Constitution.

163. Defendants contend to the contrary.

164. Thus, a controversy exists between the parties concerning the constitutionality of UIPAA and its creation of the Authority.

165. The City is entitled to judgment pursuant to Utah Code § 78B-6-401 et seq. and Rule 57 of the Utah Rules of Civil Procedure declaring that these provisions violate Article XI, Section 8 of the Utah Constitution and an injunction prohibiting further operation of the Authority.

### **PRAYER FOR RELIEF**

WHEREFORE, the City prays for relief against Defendants as follows:

A. A Declaratory Judgment finding the provisions of UIPAA that delegate power to the Authority to reverse municipal land use decisions and to make decisions regarding municipal planning and municipal infrastructure violate Article VI, Section 28 of the Utah Constitution;

B. A Declaratory Judgment finding the provisions of UIPAA that redirect 100% of the tax differential from the jurisdictional land and the provisions of Utah Code and amendments thereto that redirect a portion of the sales and use tax from points of sale on the jurisdictional land violate Article VI, Section 28 of the Utah Constitution;

C. A Declaratory Judgment finding the provisions of UIPAA that direct the City to allow an Inland Port as a permitted or conditional use, that prevent the City from prohibiting the transportation or storage of certain goods on the jurisdictional land, and that mandate the provision of municipal services and the level of those services violate Article VI, Section 28 of the Utah Constitution;

D. A Declaratory Judgment finding UIPAA creates a City or Town by special law and violates Article XI, Section 5 of the Utah Constitution;



E. A Declaratory Judgment finding UIPAA does not provide for the provision of services or facilities to the jurisdictional land and is not authorized by Article XI, section 8 of the Utah Constitution,

F. Preliminary and/or permanent injunctive relief as the Court deems necessary to prohibit Defendants from engaging in any activity in violation of the Utah Constitution,

G. An award of damages to compensate for harm incurred as a result of the unconstitutional provisions of UIPAA, including any and all damage incurred as a result of the improper redirection of City monies;

H. An award of attorney fees and costs; and

I. Such other relief as the Court deems just and equitable.

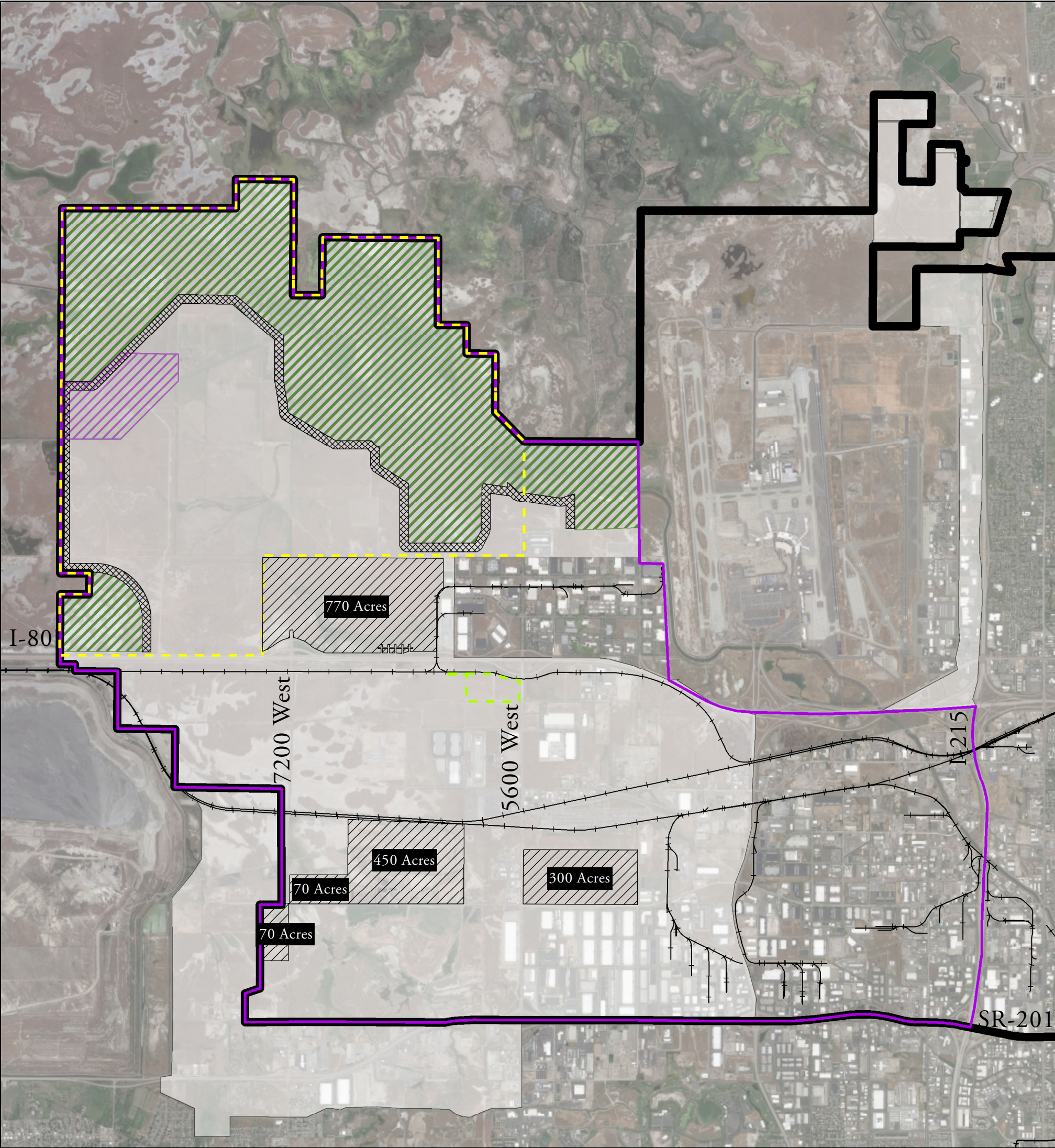
DATED this 24<sup>th</sup> day of June, 2019.

/s/ Samantha Slark  
*Attorney for Plaintiff*

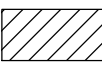






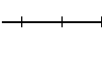


# Exhibit A



# Inland Port Authority Boundary



## Legend

- |   |   |
|---|---|
|  Landfills  |  City Boundary (~71,570 Acres)               |
|  Prison Site (~330 Acres)   |  Northwest Quadrant Boundary (~22,700 Acres) |
|  Stadler CRA (~63 Acres)  | Northwest Quadrant Overlay  |
|  NWQ CRA Area (~7,700 Acres)  |  Eco-Industrial Buffer Area (~470 Acres)     |
|  Existing Rail  |  Natural Area (~4190 Acres)                  |
|  Inland Port Authority Boundary ~22,000 total acres, ~19,500 acres within SLC (27% of land within City) |   |



# **Exhibit B**



March 12, 2018

**VIA Hand Delivery and Email to: [garyherbert@utah.gov](mailto:garyherbert@utah.gov)**

The Honorable Governor Gary Herbert  
350 North State Street, Suite 200  
PO Box 142220  
Salt Lake City, Utah 84114-2220

**Re: SB234, Utah Inland Port Authority**

Dear Governor Herbert:

Thank you for your careful consideration of the consequences—both intended and unintended—of SB234. As you and I discussed, the City is committed to the thoughtful, sustainable, and economically prudent development of an inland port in the City's northwest quadrant. We are committed to a partnership with all stakeholders to ensure the development is achieved correctly and with respect for local authority. SB234 does not accomplish that partnership and instead usurps core City land use and budgetary authority.

Further, the City has been actively collaborating with private property owners in the northwest quadrant to help facilitate their development goals for an inland port. Specifically, the City and the largest private property owners north of I-80 have executed development agreements and they are making significant investments to develop their properties to support an inland port. The City has also reached out to the major property owners south of I-80 and offered to negotiate similar development agreements to achieve their development goals. A dispute about SB234 could significantly delay the development of an inland port and related uses both north and south of I-80.

As an overview, SB234 creates an eleven member port authority board, which is a separate legal entity with nominal City representation. The port authority board is unaccountable to local voters and has exclusive jurisdiction to facilitate and implement the development of an inland port and related uses on the "jurisdictional land". It can do so by issuing bonds, buying and selling real property, hiring an executive director, and engaging in marketing and promotion of the inland port. SB234 defines "jurisdictional land" as approximately 20,000 acres of property primarily in Salt Lake City boundaries, with some in West Valley and Salt Lake County.

SB234 gives the port authority board the right to overrule local land use decisions made by Salt Lake City or West Valley City based solely on the board's opinion and without regard for Utah law or municipal ordinances. The board also has the authority to take 100% of the property taxes related to growth generated on the jurisdictional land and spend that money outside of Salt Lake City boundaries. The City projects that over the next twenty five years, as much as \$360 million in new property tax revenue allocated to the City could be redirected to the board. Additionally, during that twenty five year period, the Salt Lake

City School District could lose up to \$581 million and the Salt Lake City Library System could lose up to \$84.3 million in new property tax revenue.

The City welcomes the opportunity to restart the conversation about a true partnership to achieve the State's and City's mutual goals of facilitating the development of an inland port in the northwest quadrant. Throughout the 2018 legislative session, the City consistently made specific suggestions to revise SB234 to create this partnership, and the City is still willing to accept those changes today.

The City seeks four revisions to SB234 2<sup>nd</sup> Substitute, which was Senator Stevenson's last version of the bill. Each of these proposed revisions were discussed with Senator Stevenson throughout the legislative session, and are specifically shown in redline format attached as Exhibit B.

First, the City remains comfortable with an administrative land use appeal authority for the port authority's jurisdictional land, but that appeal authority must be subject to the same fair, equitable, and predictable standards as all other land use appeals under Utah law.

Second, the City recognizes that all governmental stakeholders must financially commit to the mutual goals of facilitating an inland port. For that reason, the City proposes giving 2% of its tax increment from existing project areas to the port authority to be spent furthering the port authority's objectives.

Third, the City proposes boundaries to the port authority's jurisdictional land that are consistent with the Redevelopment Agency of Salt Lake City's existing project area north of I-80, and its proposed project area south of I-80. A map of the proposed jurisdictional land is attached as Exhibit A. Notably, the boundaries of the jurisdictional land in the existing SB234 include an error, so a correction is already necessary.

Finally, the City proposes a nine-member port authority board, with (a) two appointments by the Governor; (b) one appointment each by the President of the Senate and the Speaker of the House; (c) four appointments by the City (split equally between the City Council and the Mayor); and (d) one appointment by the Salt Lake County Mayor. This board composition would reflect the true partnership among all the governmental stakeholders.

I look forward to a productive discussion with you to ensure that there is a true partnership to facilitate the development of an inland port that respects the City's local authority and leverages each stakeholder's subject matter expertise.

Sincerely,



Mayor Jacqueline M. Biskupski  
Salt Lake City Corporation

## EXHIBIT A

### Proposed Map of Port Authority Jurisdictional Land





## EXHIBIT B

### Proposed Revisions to SB234, 2<sup>nd</sup> Substitute (Senator Stevenson's last version of the bill)

- A. Require all land use appeals to be subject to the Utah Land Use Development and Management Act (LUDMA) and applicable City ordinances.

*Page 12, lines 365 through 366:*

~~365 (1) "Adversely affected person" means an owner of land within the authority~~  
~~366 jurisdictional land who has been adversely affected by a land use decision.~~

*Page 14, lines 399 through 405:*

~~399 The appeals panel may decide an appeal in favor of the adversely affected person if the~~  
~~400 appeals panel concludes that the land use decision that is the subject of the appeal:~~  
~~401 (1) is detrimental to achieving or implementing the strategies, policies, and objectives~~  
~~402 stated in Subsection 11-58-203(1); or~~  
~~403 (2) substantially impedes, interferes with, or impairs authority jurisdictional land~~  
~~404 development that is consistent with the strategies, policies, and objectives stated in~~  
~~Subsection~~  
~~405 11-58-203(1).~~

The appeals panel shall be subject to sections 10-9a-705, 10-9a-706, 10-9a-707, 10-9a-708 and applicable land use ordinances and administrative appeal procedures,

- B. Allow 2% of the tax increment from existing redevelopment project areas to be paid to the inland port authority.

*Page 9, lines 258 through 262:*

~~258 (2) A community reinvestment agency that has adopted an inland port project area plan~~  
~~259 shall pay the authority 5 2% of the total annual amount of inland port tax increment that the~~  
~~260 community reinvestment agency receives under the inland port project area plan or under any~~  
~~261 agreement that the community reinvestment agency has executed with taxing entities under the~~  
~~262 inland port project area plan.~~



- C. Limit the “authority jurisdictional land” to the currently existing RDA project area north of I-80 and the RDA’s proposed project area south of I-80, as described below and shown on the attached map as Exhibit A.

Page 3, lines 74 through 96:

74 (2) "Authority jurisdictional land":  
75 (a) means:  
76 (i) land north of I-80 in Salt Lake City that has:  
77 (A) ~~the same northern, southern, eastern and western boundaries as the Northwest~~  
~~Quadrant Community Reinvestment Project Area adopted by the Salt Lake City Redevelopment~~  
~~Agency on January 9, 2018; and northern boundary defined by the northern boundary of Salt Lake~~  
~~City;~~  
78 ~~(B) an eastern boundary defined by I-215;~~  
79 ~~(C) a southern boundary defined by I-80; and~~  
80 ~~(D) a western boundary defined by the western boundary of Salt Lake City's Northwest~~  
81 ~~Quadrant Master Plan Area as of January 1, 2018; and~~  
82 (ii) land south of I-80 in Salt Lake City that has:  
83 (A) a northern boundary defined by I-80;  
84 (B) an eastern boundary defined by SR 154;  
85 (C) a southern boundary defined by California Avenue; and  
86 (D) a western boundary defined by the western boundary of Salt Lake City's Northwest  
87 Quadrant Master Plan Area as of January 1, 2018 ~~and 7200 West~~; and  
88 (b) excludes:  
89 (i) the Salt Lake City airport; and  
90 (ii) an area that has:  
91 (A) a northern boundary defined by Harold Gatty Drive;  
92 (B) an eastern boundary defined by the eastern boundary of Salt Lake City's Northwest  
93 Quadrant Master Plan Area as of January 1, 2018;  
94 (C) a southern boundary defined by I-80; and  
95 (D) a western boundary defined by ~~John Glenn Road 5600 West~~.

- D. Create an equal partnership between the State and City with a nine-member port authority board, providing: (a) the Governor with two appointments; (b) the Speaker of the House and President of the Senate with one appointment each; (c), the City with four appointments (split evenly between the City Council and the Mayor); and (d) the Salt Lake County Mayor with one appointment.

Page 10, lines 278 through 284:

278 (d) The Salt Lake City mayor shall appoint two board members, ~~one of whom shall be~~  
279 ~~from the Salt Lake Airport Authority.~~  
280 (e) The Salt Lake City council shall appoint ~~one~~ **two** board members.  
281 (f) The Salt Lake County mayor shall appoint one board member.  
282 ~~(g) The chair of the Permanent Community Impact Fund Board, created in Section~~  
283 ~~35A-8-304, shall appoint one board member from among the members of the Permanent~~  
284 ~~Community Impact Fund Board.~~

# Exhibit C



# Inland Port Jurisdictional Land

